



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

January 24, 1991

Mr. Robert E. Diaz
Assistant City Attorney/
Police Legal Advisor
P.O. Box 1065
City of Arlington
Arlington, Texas 76004-0231

OR91-055

Dear Mr. Diaz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10785.

The city of Arlington received an open records request for, inter alia, "[d]ocumentation, reports, or memoranda concerning all internal investigations (I.A.D.) conducted resulting from complaints" against a named police officer. You state that portions of these documents have been released to the requestor, but you seek to withhold the remaining information relating to the internal investigations pursuant to sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.¹

You indicate that the requested information comes under the protection of section 3(a)(3), the litigation exception,

1. You also assert, in subsequent correspondence with this office, the protection of sections 3(a)(2) and 3(a)(8). We note, however, that the protection of personal privacy afforded by section 3(a)(2) is co-extensive with that of section 3(a)(1), see Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.), and that you have not demonstrated, nor is it apparent from the face of the documents at issue, how the release of any of the requested information would "unduly interfere with law enforcement." See Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).

because the open records request is from "an attorney retained by the parents of the investigation complainant who have themselves made complaints concerning this matter by meetings with the Deputy City Manager and Chief of Police." To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 328 (1982) (copy enclosed). You have not presented sufficient information for this office to make the requisite determination that the possibility of litigation regarding this matter is more than mere conjecture; consequently section 3(a)(3) is inapplicable in this instance.

Section 3(a)(11) of the act protects advice, opinion, or recommendation intended for use in the governmental deliberative process. Open Records Decision No. 464 (1987). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). We have marked those portions of the requested information that you may withhold pursuant to section 3(a)(11).

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You must withhold, pursuant to section 19A of article 4413(29cc), V.T.C.S., all documents relating to, including the results of, all polygraph examinations. See Open Records Decision No. 430 (1985) (copy enclosed). You must also withhold, pursuant to section 51.14(d) of the Family Code, all detailed reports relating to alleged delinquent conduct. See Open Records Decision No. 181 (1977) (mere deletion of juvenile's name in report that is detailed enough to reveal the juvenile's identity is not sufficient) (copy enclosed). Photographs of police officers must be withheld pursuant to section 3(a)(19) of the Open Records Act, see generally Open Records Decision No. 536 (1989), and personal financial information must also be withheld pursuant to the common-law privacy aspect of section 3(a)(1). Open Records Decision No. 481 (1987).

Finally, this office has identified several documents that do not seem to come within the ambit of the open records request. Consequently, you may also withhold those records pertaining to a rape investigation and all criminal history information derived from the TCIC or NCIC network. See also Open Records Decision No. 565 (1990). The remaining information submitted to this office must, however, be released except as specified above.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-055.

Yours very truly,

John Steiner by SG
John Steiner
Assistant Attorney General
Opinion Committee

JS/RWP/le

Ref.: ID# 10785
ID# 10815

Enclosures: Open Records Decision Nos. 430, 328, 181
Marked documents

cc: Gerald Pruitt
Vogel, Thomas & Pruitt
507 West Central Avenue
Austin, Texas 76106